

1 HB405
2 175708-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 15-MAR-16

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8 SYNOPSIS: Under existing law, a person charged with a
9 misdemeanor criminal offense, traffic violation, or
10 municipal ordinance violation and certain felony
11 offenses may petition the circuit court to have the
12 criminal record expunged if the charge was
13 dismissed or if he or she meets other limited
14 conditions.

15 This bill would provide for the expungement
16 of convictions for misdemeanor criminal offenses,
17 traffic violations, or municipal ordinance
18 violations and certain Class C and Class D felony
19 convictions, including those adjudicated as a
20 youthful offender, under limited circumstances.

21 Also under existing law, the filing fee to
22 expunge a criminal charge is \$300.

23 This bill would provide for a filing fee of
24 \$500 for the expungement of criminal convictions.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To amend Sections 115-27-1, 15-27-2, 15-27-3,
4 15-27-4, 15-27-6, 15-27-7, and 15-27-8, Code of Alabama 1975,
5 relating to the expungement of criminal records, to provide
6 for the expungement of convictions for misdemeanor criminal
7 offenses, traffic violations, or municipal ordinance
8 violations, including those adjudicated as a youthful
9 offender, under certain conditions; to provide for the
10 expungement of certain Class C and Class D felony convictions
11 under certain conditions; and to provide for a filing fee for
12 the expungement of criminal convictions.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 15-27-1, 15-27-2, 15-27-3,
15 15-27-4, 15-27-6, 15-27-7, and 15-27-8, Code of Alabama 1975,
16 are amended to read as follows:

17 "§15-27-1.

18 "(a) A person who has been charged with a
19 misdemeanor criminal offense, a violation, a traffic
20 violation, or a municipal ordinance violation may file a
21 petition in the criminal division of the circuit court in the
22 county in which the charges were filed, to expunge records
23 relating to the charge in any of the following circumstances:

24 "(1) When the charge is dismissed with prejudice.

25 "(2) When the charge has been no billed by a grand
26 jury.

1 "(3) When the person has been found not guilty of
2 the charge.

3 "(4) When the charge was dismissed without prejudice
4 more than two years ago, has not been refiled, and the person
5 has not been convicted of any other felony or misdemeanor
6 crime, any violation, or any traffic violation, excluding
7 minor traffic violations, during the previous two years.

8 "(5)a. The charge was dismissed after successful
9 completion of a drug court program, mental health court
10 program, diversion program, veteran's court, or other
11 court-approved deferred prosecution program.

12 "b. Expungement may be a court-ordered condition of
13 a program listed in paragraph a.

14 "c. Expungement shall be available under this
15 subdivision immediately if agreed upon by both parties. If no
16 agreement is reached, a petitioner may file a petition no
17 earlier than one year after the successful completion of the
18 program.

19 "(b) A person who has been convicted, or adjudicated
20 as a youthful offender, of a misdemeanor criminal offense, a
21 traffic violation, or a municipal ordinance violation may file
22 a petition in the criminal division of the circuit court in
23 the county in which the charges were filed or the conviction
24 was entered to expunge records relating to the charge when all
25 of the following circumstances exist:

1 "(1) All probation or parole requirements have been
2 completed, including the full payment of all fines, costs,
3 restitution, or other court-ordered amounts.

4 "(2) Three years have passed from the date of
5 conviction.

6 "(3) The person has no prior conviction for a
7 violent felony offense as defined in Section 12-25-32.

8 "(4) The person is not a convicted sex offender.

9 "(5) The person was not operating a commercial
10 vehicle that required the person to possess a commercial
11 driver's license at the time of the violation that led to the
12 conviction.

13 "(6) The person was not convicted of any of the
14 offenses enumerated in 49 C.F.R. § 383.51.

15 ~~(b)~~(c) The circuit court shall have exclusive
16 jurisdiction of a petition filed under subsection (a) or (b).

17 "§15-27-2.

18 "(a) A person who has been charged with a felony
19 offense, ~~except a violent offense as defined in Section~~
20 ~~12-25-32(14),~~ except an offense for which there is no statute
21 of limitations and in which there has not been an acquittal,
22 may file a petition in the criminal division of the circuit
23 court in the county in which the charges were filed, to
24 expunge records relating to the charge in any of the following
25 circumstances:

26 "(1) When the charge is dismissed with prejudice.

1 "(2) When the charge has been no billed by a grand
2 jury.

3 "(3) When the person has been found not guilty of
4 the charge, other than not guilty by reason of mental disease
5 or defect.

6 "(4)a. The charge was dismissed after successful
7 completion of a drug court program, mental health court
8 program, diversion program, veteran's court, or any
9 court-approved deferred prosecution program ~~after one year~~
10 ~~from successful completion of the program.~~

11 "b. Expungement may be a court-ordered condition of
12 a program listed in paragraph a.

13 "c. Expungement shall be available under this
14 subdivision immediately if agreed upon by both parties. If no
15 agreement is reached, a petitioner may file a petition no
16 earlier than one year after the successful completion of the
17 program.

18 "(5) The charge was dismissed without prejudice more
19 than five years ago, has not been refiled, and the person has
20 not been convicted of any other felony or misdemeanor crime,
21 any violation, or any traffic violation, excluding minor
22 traffic violations, during the previous five years.

23 "(6) Ninety days have passed from the date of
24 dismissal with prejudice, no-bill, acquittal, or nolle
25 prosequi and the charge has not been refiled.

26 "(b) A person who has been convicted, or adjudicated
27 as a youthful offender, of a Class C or Class D felony may

1 file a petition in the circuit court in the county in which
2 the charges were filed or the conviction entered to expunge
3 all records relating to the conviction when all of the
4 following circumstances exist:

5 "(1) All probation or parole requirements have been
6 completed, including the full payment of all fines, costs,
7 restitution, or other court-ordered amounts.

8 "(2) Five years have passed from the date of
9 conviction.

10 "(3) The person has no prior conviction for any
11 felony offense.

12 "(4) The offense is not a violent felony as defined
13 in Section 12-25-32.

14 "(5) The offense is not a sex offense as defined in
15 Section 15-20A-5.

16 "(6) The person is not a convicted sex offender.

17 "(7) The person does not have a criminal charge
18 pending.

19 ~~(b)~~ (c) The circuit court shall have exclusive
20 jurisdiction of a petition filed under subsection (a) or (b).

21 "§15-27-3.

22 "(a) A petition filed under this chapter shall
23 include a sworn statement made by the person seeking
24 expungement under the penalty of perjury stating that the
25 person has satisfied the requirements set out in this chapter
26 and whether he or she has previously applied for an

1 expungement in any jurisdiction and whether an expungement has
2 been previously granted.

3 "(b) The petitioner shall include a certified record
4 of arrest, disposition, or the case action summary from the
5 appropriate agency for the court record the petitioner seeks
6 to have expunged as well as a certified official criminal
7 record obtained from the Alabama Criminal Justice Information
8 Center. In addition to setting forth grounds for the court to
9 consider, the petitioner shall specify what criminal charges
10 from the record are to be considered, further specify the
11 agency or department that made the arrest and any agency or
12 department where the petitioner was booked or was incarcerated
13 or detained pursuant to the arrest or charge sought to be
14 expunged.

15 "(c) A petitioner shall serve the district attorney,
16 the law enforcement agency, and clerk of court of the
17 jurisdiction for which the records are sought to be expunged,
18 a copy of the petition, and the sworn affidavit. Upon
19 notification of the petitioner, the district attorney shall
20 make reasonable efforts to notify the victim of the petitioner
21 filing the petition if the case for which the petition was
22 filed qualifies under Section 15-27-1(b) or Section
23 15-27-2(b). The district attorney shall review the petition
24 and may make reasonable efforts to notify the victim if the
25 petition has been filed seeking an expungement under
26 circumstances enumerated in paragraph a. of subdivision (4) of
27 Section 15-27-2 involving a victim that is not a governmental

1 entity. The district attorney and the victim shall have a
2 period of 45 days to file a written objection to the granting
3 of the petition or the district attorney shall be deemed to
4 have waived the right to object. The district attorney shall
5 serve the petitioner or the petitioner's counsel a copy of the
6 written objection.

7 "§15-27-4.

8 "(a) ~~In~~ For the expungement of records under
9 Sections 15-27-1(a) and 15-27-2(a), except for cases in which
10 there was an acquittal, in addition to any cost of court or
11 docket fee for filing the petition in circuit court, an
12 administrative filing fee of three hundred dollars (\$300)
13 shall be paid at the time the petition is filed and is a
14 condition precedent to any ruling of the court pursuant to
15 this chapter. The administrative filing fee shall not be
16 waived by the court and shall be distributed as follows:

17 "(1) Seventy-five dollars (\$75) to the State
18 Judicial Administrative Fund.

19 "(2) Twenty-five dollars (\$25) to the Alabama
20 Department of Forensic Sciences.

21 "(3) Fifty dollars (\$50) to the district attorney's
22 office.

23 "(4) Fifty dollars (\$50) to the clerk's office of
24 the circuit court having jurisdiction over the matter, for the
25 use and benefit of the circuit court clerk.

26 "(5) Fifty dollars (\$50) to the Public Safety Fund.

1 "(6) Fifty dollars (\$50) to the general fund of the
2 county where the arresting law enforcement agency is located
3 if the arrest was made by the sheriff's office to be used for
4 law enforcement purposes, or, if the arrest was made by
5 another law enforcement agency, to the municipality or other
6 entity or state agency funding the law enforcement activity.

7 "(b) For the expungement of records under Section
8 15-27-1(b) or 15-27-2(b), in addition to any cost of court or
9 docket fee for filing the petition in circuit court, an
10 administrative filing fee of five hundred dollars (\$500) shall
11 be paid at the time the petition is filed and is a condition
12 precedent to any ruling of the court pursuant to this chapter.
13 The administrative filing fee shall not be waived by the court
14 and shall be distributed as follows:

15 "(1) One hundred dollars (\$100) to the State
16 Judicial Administrative Fund.

17 "(2) Forty-five dollars (\$45) to the Alabama
18 Department of Forensic Sciences.

19 "(3) One hundred fifteen dollars (\$115) to the
20 district attorney's office.

21 "(4) Eighty dollars (\$80) to the clerk's office of
22 the circuit court having jurisdiction over the matter, for the
23 use and benefit of the circuit court clerk.

24 "(5) Eighty dollars (\$80) to the Public Safety Fund.

25 "(6) Eighty dollars (\$80) to the general fund of the
26 county where the arresting law enforcement agency is located
27 if the arrest was made by the sheriff's office to be used for

1 law enforcement purposes, or, if the arrest was made by
2 another law enforcement agency, to the municipality or other
3 entity or state agency funding the law enforcement activity.

4 "~~(b)~~ (c) Notwithstanding subsection (a) or (b), a
5 person seeking relief under this chapter may apply for
6 indigent status by completing an Affidavit of Substantial
7 Hardship and Order which shall be submitted with the petition.
8 If the court finds the petitioner is indigent, the court may
9 set forth a payment plan for the petitioner to satisfy the
10 filing fee over a period of time, which shall be paid in full,
11 prior to any order granting an expungement.

12 "~~(c)~~ (d) If a petitioner seeks expungement of an
13 arrest record and the court in the original case made a clear
14 and unequivocal judicial finding on the record that the arrest
15 had no foundation of probable cause, the court, in the
16 expungement proceeding, shall waive all docket fees and court
17 costs, except for the filling fee in subsection (a).

18 "§15-27-6.

19 "(a) Except as provided in Section 15-27-10, upon
20 the granting of a petition pursuant to this chapter, the
21 court, pursuant to Section 15-27-9, shall order the
22 expungement of all records in the custody of the court and any
23 records in the custody of any other agency or official,
24 including law enforcement records, except privileged
25 presentence or postsentence investigation reports produced by
26 the Alabama Board of Pardons and Paroles and its officers,
27 records, documents, databases, and files of the district

1 attorney and the Office of Prosecution Services. On July 7,
2 2014, and for 18 months thereafter, every agency with records
3 relating to the arrest, charge, or other matters arising out
4 of the arrest or charge that is ordered to expunge the records
5 shall certify to the court within 180 days of the entry of the
6 expungement order that the required expungement action has
7 been completed.

8 "(b) After the expungement of records pursuant to
9 subsection (a), the proceedings regarding the charge shall be
10 deemed never to have occurred. Except as provided in this
11 chapter, the court and other agencies shall reply to any
12 inquiry that no record exists on the matter. The petitioner
13 whose record was expunged shall not have to disclose the fact
14 of the record or any matter relating thereto on an application
15 for employment, credit, or other type of application. However,
16 the petitioner whose record was expunged shall have the duty
17 to disclose the fact of the record and any matter relating
18 thereto to any government regulatory or licensing agency, any
19 utility and its agents and affiliates, or any bank or other
20 financial institution. In these circumstances, the government
21 regulatory or licensing agency, utility and its agents and
22 affiliates, or the bank or other financial institution shall
23 have the right to inspect the expunged records after filing
24 notice with the court.

25 "(c) A petitioner shall have the right to obtain
26 documentation that an expungement was granted upon filing a
27 notice with the court requesting documentation and

1 establishing proof of identity. The documentation shall be
2 limited to the case number, petitioner's name, a listing of
3 the charges, if requested by the petitioner, and a written
4 certification that the case was expunged that is signed by the
5 circuit clerk or presiding judge.

6 "§15-27-7.

7 "(a) Upon receipt of the order of expungement, a
8 criminal justice agency in possession of records subject to
9 the order shall immediately forward the records to the Alabama
10 Criminal Justice Information Center. The center shall
11 digitally archive the records in a manner prescribed by the
12 Alabama ~~Criminal~~ Justice Information ~~Center~~ Commission and
13 designate the records as protected notwithstanding any other
14 provisions of this chapter. Such records may not be used for
15 any non-criminal justice purpose and may only be made
16 available to criminal justice agencies upon acknowledgement of
17 an investigation or other criminal matter involving the person
18 related to the expungement, or used in criminal proceedings
19 upon an order of the court for the limited purpose of
20 impeachment after a showing of contradictory testimony by the
21 petitioner. Any expunged records that were added to a federal
22 database shall be requested to be removed and not made
23 available within any interstate criminal database.

24 "(b) Records expunged under this chapter may not be
25 transmitted to the Federal Bureau of Investigation national
26 criminal records repository. Any record subject to be expunged
27 under this chapter and transmitted to the Federal Bureau of

1 Investigation prior to the expungement of such record shall be
2 requested for withdrawal within the national system by the
3 Alabama Criminal Justice Information Center.

4 "§15-27-8.

5 "Once the records are expunged pursuant to this
6 chapter, the records, except for records held electronically
7 in the Criminal Justice Information System (CJIS), shall be
8 forwarded to the Alabama Criminal Justice Information Center
9 in a manner prescribed by the Alabama ~~Criminal~~ Justice
10 Information ~~Center~~ Commission for purposes of archiving, and
11 the records shall be stored in a manner prescribed by the
12 Alabama ~~Criminal~~ Justice Information ~~Center~~ Commission. The
13 records shall be retained by the Alabama Criminal Justice
14 Information Center indefinitely. The Alabama Justice
15 Information Commission shall prepare and present a written
16 report to the Legislature on a yearly basis to describe the
17 type and number of records stored and the conditions of the
18 storage. Records held electronically in CJIS shall be sealed
19 from view and only available by a court order obtained
20 pursuant to this chapter."

21 Section 2. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.